

Decision 18-10-010 October 11, 2018

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Joint Application of Southern California Edison  
Company (U338E) and San Diego Gas & Electric  
Company (U902E) for the 2015 Nuclear  
Decommissioning Cost Triennial Proceeding.

Application 16-03-004

And Related Matters.

Application 15-01-014

Application 15-02-006

**DECISION ON PHASE 1 OF SOUTHERN CALIFORNIA EDISON COMPANY  
(U338E) AND SAN DIEGO GAS & ELECTRIC COMPANY'S (U902E) 2015  
NUCLEAR DECOMMISSIONING COST TRIENNIAL PROCEEDING AND  
RELATED PROCEEDING**

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**DECISION ON PHASE 1 SOUTHERN CALIFORNIA EDISON COMPANY (U338E) AND SAN DIEGO GAS & ELECTRIC COMPANY'S (U902E) 2015 NUCLEAR DECOMMISSIONING COST TRIENNIAL PROCEEDING AND RELATED PROCEEDINGS**

**Summary**

The Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E) (collectively “the Utilities”) filed a joint application (Application 16-03-004) seeking review of decommissioning costs of San Onofre Nuclear Generating Station (SONGS) Unit 1 and Units 2 and 3 and Palo Verde Nuclear Generating Station (PVNGS) Units 1, 2, and 3. The proceeding was conducted in three (3) phases. The Phase 1 issues addressed in this decision are: 1) reasonableness review of 2009-2012 SONGS 1 decommissioning costs; 2) reasonableness review of 2013-2015 SONGS 1 decommissioning costs; and 3) reasonableness of nuclear fuel contract cancellation costs. Issues addressed in Phases 2<sup>1</sup> and 3<sup>2</sup> of the proceeding are considered in a separate decision.

SCE and SDG&E bear the burden of proof to establish the reasonableness of costs incurred by a preponderance of the evidence. This decision finds that the Utilities have met their burden as to the 2009-2012 SONGS 1 decommissioning costs and the 2013-2015 SONGS 1 decommissioning costs reviewed in this phase of the proceeding. The reasonableness of the \$55.2 million for the SONGS 2 and 3 nuclear fuel contract cancellation costs is deferred to the

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<sup>1</sup> The issues considered in Phase 2 were: 1) SONGS Unit 1 decommissioning cost estimate (DCE); 2) PVNGS DCE; and 3) major project/milestone framework.

<sup>2</sup> The issues considered in Phase 3 were: 1) Reasonableness review of 2014 and 2015 SONGS Units 2 and 3 decommissioning costs; and 2) compliance with prior Commission decisions.

2018 NDCTP to allow for a more complete record given the issuance of Decision (D.) 18-07-037.

## **1. Background**

The Nuclear Regulatory Commission (NRC) exercises exclusive jurisdiction as to nuclear power plants for radiological health and safety issues. In accordance with NRC requirements, nuclear power plant operators or licensees must provide financial assurances (through a trust, guarantee from parent company, or other acceptable mechanism) that necessary funds for all decommissioning costs of the facility are available. These funds must cover all activities to safely achieve license termination, spent fuel management, and site restoration. The nuclear power plant operator or licensee is responsible for complying with the NRC's rules and regulations to ensure radiological health and safety of the public. The NRC rules and regulations generally preempt state regulations in this area.

California adopted the California Nuclear Decommissioning Act of 1985 (Decommissioning Act) to establish a regulatory framework to ensure adequate financial resources for safe decommissioning of California's nuclear power plants. The Decommissioning Act mandates that the California Public Utilities Commission (Commission) adopt regulations and guidelines to protect ratepayers and shareholders from decommissioning-related financial risks. The Commission meets this statutory mandate through the Nuclear Decommissioning Cost Triennial Proceeding (NDCTP). A discussion of federal and state (including Commission) regulation of nuclear power plant decommissioning is set forth below.

### **1.1. Federal Regulatory Authority Over Nuclear Decommissioning**

The Atomic Energy Act (AEA) provides for a comprehensive federal regulatory and licensing scheme that permits the private use, control, ownership, operation, and decommissioning of commercial nuclear power plants.<sup>3</sup> As the Commission stated in Decision (D.) 14-12-082 at 20-21:

The Atomic Energy Act of 1954<sup>4</sup> provided the federal government with exclusive jurisdiction to license the transfer, delivery, receipt, acquisition, possession, and use of nuclear materials.<sup>5</sup> Congress, in passing the 1954 Act and later amendments, intended that “the U.S. Government should regulate the radiological safety aspects involved in the construction and operation of a nuclear plant, but that the States retain their traditional responsibility in the field of regulating electrical utilities for determining questions of need, reliability, cost, and other related state concerns.”<sup>6</sup>

In a 1983 pre-emption test of state law, the U.S. Supreme Court affirmed the Federal Government maintains complete control of the safety and “nuclear” aspects of energy generation; and that states have “no role” regarding the license, transfer, delivery, receipt, acquisition, possession, and use of nuclear materials.<sup>7</sup>

For example, issues regarding the type of nuclear fuel used in operations, the type of casks used for dry storage, the operation of the SNF pool, are federal jurisdictional matters. As an example of this federal authority, to receive an NRC operating license, one

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<sup>3</sup> Joint Application of Southern California Edison Company (U 338-E) and San Diego Gas & Electric Company (U 902-E) for the 2015 NDCTP, Application (A.) 16-03-004 filed March 1, 2016, citing to *Duke Power Co. v. Carolina Envtl. Study Grp. Inc.* (1978) , 438 U.S. 59, 63

<sup>4</sup> 42 U.S.C. Section 2011 et seq.

<sup>5</sup> *PG&E v. State Energy Resources Conservation and Development Commission* (1983), 461 U.S. 190, 2017).

<sup>6</sup> *Id.* at 205.

<sup>7</sup> *Id.* at 207.

must submit a safety analysis report, which includes a radioactive waste handling system.<sup>8</sup> The regulations specify general design criteria and control requirements for fuel storage and handling and radioactive waste to be stored at the reactor site [10 C.F.R. pt. 50, app. A (1982)]. In addition, the NRC has promulgated detailed regulations governing storage and disposal away from the reactor. [10 C.F.R. pt. 72 (1982).] Lastly, the NRC issued its first nuclear decommissioning requirements in 2000.<sup>9</sup>

The AEA specifically provides authority for NRC regulation of the construction, operation, and decommissioning of nuclear reactor facilities to protect the public health and safety from radiological risks. The NRC may not cede this authority,<sup>10</sup> as its “prime area of concern in the licensing context... is national security, [and] public safety.”<sup>11</sup> The states are precluded from interfering with the NRC’s jurisdiction over aspects of decommissioning operations relating to radiological health and public safety issues, including spent fuel management practices.<sup>12</sup>

The NRC, in accordance with this broad statutory mandate under the AEA, has established a comprehensive regulatory scheme for addressing the decommissioning of nuclear power plants. NRC regulations require a license for removal of nuclear power reactors from service. Federal regulations require the reduction of residual radioactivity to a level that permits unrestricted or

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<sup>8</sup> 10 C.F.R. Section 50.34(b)(2)(i),(ii) (1982), and 150.15(a)(1)(i)(1982).

<sup>9</sup> NRC Research Guide 1.184 (Decommissioning of Nuclear Power Reactors (July 2000)) <http://pbadupws.nrc.gov/docs/ML0037/ML003701137.pdf>. [The most recent update to Regulatory Guide 1.184 was issued in October 2013.]

<sup>10</sup> Joint Application at 14; 42 U.S.C. Section 2021(c)(1).

<sup>11</sup> Joint Application at 13 citing to *Pacific Gas*, 461 U.S. at 207

<sup>12</sup> Joint Application at 13; also citing *Silkwood v. Kerr-McGee Corp.*, (1984) 464 U.S. 238, 250-51.

restricted use following permanent shutdown (10 C.F.R. Section 50.2) of a nuclear power plant. 10 C.F.R. Section 50.82 (Termination of License), provides for permanently shutting down a reactor, decommissioning a reactor, and terminating the reactor's operating license. The NRC licensees are required "to submit a Post Shutdown Decommissioning Activities Report (PSDAR),<sup>13</sup> Irradiated Fuel Management Plan (IFMP),<sup>14</sup> and DCE for the NRC's review."<sup>15</sup> These plans and estimates provide for radiological decommissioning, the schedule for decommissioning, an assessment of the impact on the environment, plans for the handling of the spent fuel, and the cost to decommission the nuclear power plant. The licensee is required to submit a license termination plan two years before decommissioning. This plan must describe the remaining decommissioning activities and include a final site survey which is necessary for the termination of the plant's operating licenses pursuant to 10 C.F.R. Section 50.82(a)(11).<sup>16</sup>

The NRC maintains regulatory authority during permanent shutdown and through decommissioning. The regulations that address operations and decommissioning set out in 10 C.F.R. include the following:<sup>17</sup>

- Section 20 –Standards for Protection Against Radiation
- Section 50 –Domestic Licensing of Production and Utilization Facilities

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<sup>13</sup> 10 C.F.R. Section 50.82(a)(4)(i).

<sup>14</sup> 10 C.F.R. Section 50.54(bb).

<sup>15</sup> Joint Application at 13 citing to 10 C.F.R. Section 50.82(a)(8)(iii) & (iv).

<sup>16</sup> Joint Application at 13-14.

<sup>17</sup> See Joint Application at 13-14 and 10 C.F.R. Sections 20, 50, 51, 72, and 73.



- Section 51 – Environmental Protection Regulations for Domestic Licensing and Related Functions
- Section 72 – Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste
- Section 73 Physical Protection of Plants and Materials

Regulatory guides and NUREGs<sup>18</sup> provided through the NRC offer guidance to licensees for general matters, licensing, shutdown, management of spent nuclear fuel, and decommissioning. The guidance documents include, but are not limited to the following:<sup>19</sup>

- Regulatory Guide 1.184 – Decommissioning of Nuclear Power Reactors
- Regulatory Guide 1.185 – Standard Format and Content for Post-Shutdown Decommissioning Activities Report
- Regulatory Guide 1.179 –Standard Format and Content for License Termination Plans for Nuclear Power Reactors
- Regulatory Guide 1.191 – Fire Protection Program for Nuclear Power Plants During Decommissioning and Permanent Shutdown
- NUREG-0586 – Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities

In addition to the above, NRC staff conduct inspections of nuclear power plants during decommissioning. After a licensee has certified to the NRC that all fuel has been removed from the reactor, an inspection program designed for decommissioning nuclear power plants is implemented through the license

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<sup>18</sup> NUREG is used as the U.S. Nuclear Regulatory Commission technical report designation (i.e. NUREG – 0544, Rev. 5 is the U.S. NRC Collection of Abbreviations).

<sup>19</sup> See Joint Application at 14.

termination period.<sup>20</sup> The NRC inspection program is put in place “to ensure the reactor is decommissioned safely, spent fuel is stored safely, and site operations and license termination activities comply with regulatory requirements, licensee commitments, and management controls.” Inspection areas include:<sup>21</sup>

- Safety reviews, design changes, and modifications
- Maintenance and surveillance
- Physical Security assessment
- Spent fuel pool safety
- Occupational radiation exposure
- Radwaste treatment, and effluent and environmental monitoring

## **1.2. Regulation of Worker Safety**

In addition to NRC regulation of radiological health and safety issues, “SCE implements a comprehensive safety program to ensure that all SONGS personnel complete decommissioning activities safely.”<sup>22</sup> The Division of Occupational Safety and Health (Cal/OSHA) provides oversight regarding non-radiological worker health and safety issues. Nuclear power plant operators and licensees in California must comply with Cal/OSHA requirements and track their safety record. While the NRC regulates “cleanup of radioactive components to protect the radiological health and safety of workers throughout the decommissioning process”,<sup>23</sup> Cal/OSHA regulates worker safety issues.

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<sup>20</sup> NRC Inspection Manual, IMC 2561, Decommissioning Power Reactor Inspection Program cited in Joint Application at 15.

<sup>21</sup> See Joint Application at 16.

<sup>22</sup> Joint Application at 16.

<sup>23</sup> Joint Application at 16.

### **1.3. The California Nuclear Decommissioning Act of 1985**

The Decommissioning Act sets forth the statutory directive for decommissioning activities of nuclear power plants in California. In adopting the Decommissioning Act, the Legislature intended to protect ratepayers and shareholders from decommissioning financial risks, as well as to ensure intergenerational equity in that customers who benefitted from the nuclear facilities operation would pay for reasonable decommissioning costs.<sup>24</sup> Section 8322 of the Decommissioning Act sets out the Legislative findings and declarations concerning decommissioning of nuclear power plants, which include:

- a) protection of California citizens from exposure to radiation from nuclear facilities;
- b) costs of electricity generated by nuclear facilities be fairly distributed among present and future California electric customers (customers should only be charged for costs that are reasonably and prudently incurred);
- c) costs for decontamination and decommissioning should be reduced to the lowest level consistent with public health and safety;
- d) ultimate costs of decommissioning are significant and come with financial risk to both electric customers and investors unless prudent provision is made for defraying such costs; and
- e) to reduce both risk and costs, California should establish a comprehensive framework for timely payment of the costs of decommissioning and provide for allocation of risks and costs among the respective interests.

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<sup>24</sup> Pub. Util. Code § 8322(d) and (e); Pub. Util. Code §§ 8322(f) and 8323.

Section 8322(f) sets forth the “principal considerations in establishing a state policy respecting the economic aspects of decommissioning.” These principal considerations are:

- 1) assurance that funds required for decommissioning are available at the time and in the amount required for protection of the public;
- 2) minimizing the cost to electric customers of an acceptable level of assurance; and
- 3) structuring payments for decommissioning so that electric customers and investors are treated equitably over time so that customers are charged only for costs that are reasonably and prudently incurred.

Section 8322(f) also declares that:

decommissioning nuclear facilities causes electric utility employees to become unemployed through no fault of their own, and that these employees are entitled to reasonable job protection the costs of which are properly included in the costs of decommissioning work.

Section 8323 requires the Commission to “develop regulations and guidelines that promote realism in estimating costs, provide periodic review procedures that create maximum incentives for accurate cost estimates, and provide for decommissioning cost controls.” Section 8325 of the Decommissioning Act “requires each utility owning in whole or part or operating a nuclear power plant to establish an externally managed, segregated fund for the purposes of meeting the requirements of the Decommissioning Act. The fund shall be a fund that qualifies for a tax deduction pursuant to Section 468A of the U.S. Internal Revenue Service Code if such tax treatment is in the long-term best interest of ratepayers. The Commission pursuant to this section of the Decommissioning Act shall authorize the Utilities to collect

revenues in rates to make the maximum contributions to the fund established pursuant to Section 8325, and to otherwise recover the revenue requirements associated with reasonable and prudent decommissioning costs of the nuclear facilities.

Pursuant to Section 8326 each utility owning in whole or in part or operating a nuclear facility shall provide a decommissioning cost estimate to the Commission for all nuclear facilities which shall include the following:

- 1) an estimate of costs of decommissioning;
- 2) a description of changes in regulation, technology, and economics affecting the estimate costs;
- 3) a description of additions and deletions to nuclear facilities; and
- 4) upon request of the Commission other information required by the NRC regarding decommissioning costs.

The decommissioning cost estimate is to be periodically revised in accordance with procedures adopted by the Commission. The Commission pursuant to Section 8327 is required to review the decommissioning costs estimate for the electrical utility in order to ensure that the estimate takes account of changes in the technology and regulation of decommissioning, the operating experience of each nuclear facility, and the changes in the general economy. The review shall specifically include all cost estimates, the basis for the cost estimates, and all assumptions about the remaining useful life of the nuclear facilities.

The Decommissioning Act, pursuant to Sections 8326 and 8327, requires the Commission to regularly review the Decommissioning Cost Estimates (DCEs) submitted by the Utilities for assurances of full funding to cover decommissioning costs for the utility's nuclear facilities, and to adjust customer

rates if needed.<sup>25</sup> The DCE is to include the most recent and reliable information concerning site operations, economic conditions, available technology, and regulations, including NRC requirements and industry guidelines.

The Decommissioning Act,<sup>26</sup> mandates the Commission to authorize the Utilities “to collect sufficient revenues and rates to make the maximum contributions” to the Nuclear Decommissioning Trusts (NDTs), to the maximum extent deductible for federal and state income tax purposes pursuant to Internal Revenue Code Section 468A and applicable regulations, “and to otherwise recover the revenue requirements associated with reasonable and prudent decommissioning costs of the nuclear facilities for purposes of making contributions into other funds established pursuant to [the Act].”<sup>27</sup>

#### **1.4. Decommissioning Cost Triennial Proceedings**

California law directs the Commission to “develop regulations and guidelines that promote realism in estimating costs, provide periodic review procedures that create maximum incentives for accurate cost estimations, and provide for decommissioning cost controls.”<sup>28</sup> To meet this statutory mandate the Commission conducts its review of nuclear decommissioning costs and activities through the Nuclear Decommissioning Costs Triennial Proceeding (NDCTP). The Commission’s primary function in the NDCTP concerns review of economic, ratemaking and cost-recovery issues.<sup>29</sup> The NDCTP centers on

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<sup>25</sup> Pub. Util. Code §§ 8326 and 8327.

<sup>26</sup> Pub. Util. Code §§ 8321, et seq.

<sup>27</sup> Pub. Util. Code § 8325(c).

<sup>28</sup> Pub. Util. Code § 8323.

<sup>29</sup> Nuclear Decommissioning Act of 1985 (Decommissioning Act); and Joint Application at 16.

review and determination of the reasonableness of the Utilities' decommissioning cost estimates, activities, and actual costs incurred.<sup>30</sup> The Commission reviews DCEs prior to performance of decommissioning activities, and then reviews actual costs after the fact to determine whether such expenditures are reasonable and prudent.<sup>31</sup>

D.10-07-047 sets forth the objectives of the NDCTP. The objectives are:

[1] to set the annual revenue requirements for the decommissioning trusts for the nuclear power plants owned by Southern California Edison Company, San Diego Gas & Electric Company, and Pacific Gas and Electric Company, [2] to verify the utilities are in compliance with prior decisions applicable to decommissioning, and [3] to determine whether actual expenditures by utilities for decommissioning activities are reasonable and prudent."<sup>32</sup>

The NDCTP has historically addressed

- 1) sufficiency of the utilities' nuclear decommissioning trusts (NDTs) as to estimated decommissioning costs, including whether customer contributions are adequate to cover such costs;
- 2) compliance with prior Commission decisions applicable to decommissioning; and
- 3) the reasonableness of activities and recorded expenditures incurred by the Utilities for decommissioning.

The NDCTP provides the Commission with a vehicle to consider the prudence and reasonableness of the Utilities' DCEs, actual activities, and decommissioning costs for SONGS 1 and SONGS 2 and 3, as well as the Palo Verde Nuclear

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<sup>30</sup> Joint Application at 16.

<sup>31</sup> D.17-05-020 at 14.

<sup>32</sup> D.10-07-047 at 2.

Generating Station (PVNGS). The NDCTP involves primarily ratemaking, financial, and cost recovery issues.

## **2. Procedural Background**

On March 1, 2016, Southern California Edison (SCE) and San Diego Gas & Electric (SDG&E) (collectively “the Utilities”) filed this joint application requesting a two-phase procedural schedule and seeking the following Commission actions as to the 2015 Decommissioning Cost Triennial Proceedings:

### Utilities Proposed Phase 1

- 1) Approve as reasonable the \$13.9 million (100% share, 2011\$) for San Onofre Nuclear Generating Station Unit 1 (SONGS 1)<sup>33</sup> decommissioning expenses incurred between January 1, 2009 and December 31, 2012;<sup>34</sup>
- 2) Approve as reasonable the \$6.2 million (100% share, 2011\$) for SONGS 1 decommissioning expenses incurred between January 1, 2013 and December 31, 2015;
- 3) Approve as reasonable the updated \$239.4 million (100% share, 2014\$) 2016 SONGS 1 decommissioning cost estimate (DCE) for remaining SONGS 1 decommissioning work;
- 4) Approve as reasonable SONGS 2 and 3<sup>35</sup> decommissioning expenses for activities completed between January 1, 2014 and December 31, 2014 (the Utilities stated that they would

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<sup>33</sup> SCE holds an 80% interest and SDG&E holds a 20% interest in SONGS 1 decommissioning liability.

<sup>34</sup> D.14-12-082 did not allow \$13.9 million (100% share) in 2009-2012 SONGS 1 decommissioning expenses and directed SCE (and SDG&E) to return the funds to SONGS 1 Non-Qualified Nuclear Decommissioning Trust (NDT).

<sup>35</sup> SCE holds an approximately 75.74% interest, SDG&E holds a 20% interest, the City of Anaheim holds an approximately 2.47% interest, and the City of Riverside holds a 1.79% interest in SONGS 2 and 3 decommissioning liability, respectively.



provide additional testimony identifying the 2014 decommissioning expenses at a later date);<sup>36</sup>

- 5) Approve as reasonable SONGS 2 and 3 decommissioning expenses for activities completed between January 1, 2015 and December 31, 2015 (the Utilities stated that they would provide additional testimony identifying the 2014 decommissioning expenses at a later date).

SCE separately requested that the Commission:

- 1) Approve as reasonable the updated \$521.9 million (SCE share, 2013\$) 2016 Palo Verde Nuclear Generating Station Unit Nos. 1, 2, and 3 (PVNGS)<sup>37</sup> DCE;
- 2) Approve SCE's request to maintain its annual contributions to its PVNGS NDTs at \$0.0 (zero), based upon the current estimate of decommissioning costs for PVNGS, current level of funding of the PVNGS NDTs, projected escalation rates, and financial market conditions known at this time; and
- 3) Approve SCE's request to maintain its annual contributions to its SONGS 1 NDTs at \$0.00 (zero), based upon the current estimate of decommissioning costs for SONGS 1, current level of funding of the SONGS 1 NDTs, projected escalation rates, and financial market conditions known at this time.

SDG&E separately requested that the Commission:

- 1) Approve as reasonable the \$2.8 million (SDG&E share, 2011\$) for SONGS 1 decommissioning expenses incurred between January 1, 2009 and December 31, 2012;

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<sup>36</sup> The Utilities note in the Application that a motion to consolidate A.15-01-014 and A.15-02-006 (SONGS 2 and 3 Costs Reasonableness Review Proceeding) with this proceeding will be filed. The motion to consolidate was filed with the Commission on March 9, 2016. The proceedings were consolidated on February 23, 2017 during the Prehearing Conference (PHC). The consolidation of these proceedings is confirmed here and discussed further below.

<sup>37</sup> SCE holds a 15.8% interest in PVNGS decommissioning liability as noted in the Application at footnote 5.

- 2) Approve as reasonable the \$1.3 million (SDG&E share, nominal \$) for SONGS 1 decommissioning expenses invoiced to SDG&E between January 1, 2013 and December 31, 2015;
- 3) Approve as reasonable the \$47.9 million (SDG&E share, 2014\$) of the 2016 SONGS 1 DCE for remaining SONGS 1 decommissioning work;
- 4) Approve as reasonable the \$42.6 million (2014\$) in future SDG&E-only costs for SONGS 1, 2, and 3;
- 5) Approve as reasonable SDG&E's share of the SONGS 2 and 3 decommissioning expenses invoiced to SDG&E for activities completed between January 1, 2014 and December 31, 2015, and SDG&E-only costs for SONGS 1, 2, and 3 incurred during this time period (SDG&E will provide supplemental testimony to be submitted at a later date); and
- 6) Approve SDG&E's request to maintain its annual contributions to its SONGS 1 NDTs at \$0.00 (zero), based upon the current estimate of decommissioning costs for SONGS 1, current level of funding of the SONGS 1 NDTs, projected escalation rates, and financial market conditions known at this time.

#### Utilities Proposed Phase 2

The Utilities propose that the 2016 SONGS 2 and 3 DCE be reviewed in the second phase of the proceeding.<sup>38</sup>

On March 9, 2016, the Utilities moved for consolidation of this proceeding with Application (A.) 16-03-006, (Pacific Gas and Electric Company's [PG&E] Nuclear Decommissioning Cost Triennial Proceeding [NDCTP] review), as well as A.15-01-014 and A.15-02-006 (2014 SONGS 2 and 3 Reasonableness Review).

On March 17, 2016, the Commission preliminarily categorized this proceeding as ratesetting with hearings required in Resolution ALJ 176-3374.

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<sup>38</sup> The parties recently submitted a new proposed list of issues and schedule that includes three rather than two phases. The issues presented, and schedule are discussed below.

Protests were filed by the Office of Public Advocates Office of the Public Utilities Commission (Cal Advocates)<sup>39</sup> and The Utility Reform Network (TURN) on April 4, 2016. The Alliance for Nuclear Responsibility (A4NR) filed a response to the Application on April 6, 2016 and a motion for party status, as well as, a motion seeking permission to late file its response on April 7, 2016. On April 14, 2016, the Utilities jointly filed a reply to the protests and response.

On May 10, 2016, the assigned Administrative Law Judge (ALJ) issued a ruling scheduling a PHC for June 13, 2016, requiring parties to meet and confer regarding the procedural schedule and scope of this proceeding, and to set forth any agreed-upon proposals in PHC statements. The ruling also granted the A4NR's motions for party status and to late-file responses.

On June 6, 2016, the Utilities filed and served their PHC statement, including a Meet and Confer Report (the Report) from all parties regarding the proposed consolidated proceedings. The Report proposed consolidation of all four proceedings but recommended three phases for addressing the applications. The Report contained an agreed-upon list of issues for each phase and a proposed schedule. A limited number of disputed issues were also set forth in the Report.

On June 13, 2016, the assigned ALJ convened a PHC for this proceeding as well as PG&E's NDCTP, A.16-03-006. The parties discussed whether the applications had sufficient factual and legal overlap with the other proceedings.

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<sup>39</sup> The Office of Ratepayer Advocates (ORA) was renamed the Public Advocates Office of the Public Utilities Commission (Cal Advocates) pursuant to Senate Bill 854, which the Governor approved on June 27, 2018. Documents in this proceeding were filed by Cal Advocates prior to June 27, 2018 and therefore the filings in the record reflect ORA as the party that is now named Cal Advocates. This decision therefore uses both ORA and Cal Advocates to reflect the same entity.

On October 20, 2016, A.16-03-004, A.15-01-014, and A.15-02-006 were reassigned from ALJ Maribeth A. Bushey to ALJ Darcie L. Houck. On January 27, 2017, the assigned ALJ issued a Ruling directing the parties to meet and confer and file an updated Report as to the party positions and proposed schedule. The Utilities filed a joint updated Meet and Confer Report (Updated Report) on February 10, 2017.

On February 23, 2017, a second PHC was held to discuss the parties, scope of proceeding, and schedule for proceeding. On February 23, 2017, during the prehearing conference, PG&E requested and was granted party status in the proceeding. Also on February 23, 2017, Ruth Henricks filed a motion for party status in the proceeding. This motion is also granted.

The parties were directed to file a second updated report that included a proposed schedule that would be based on the three-phase model proposed by SDG&E in the February 10, 2017 Report. The parties filed the updated report with proposed schedule on March 1, 2017.

On March 23, 2018 a scoping memo was issued in the proceeding affirming the preliminary categorization of the proceeding as ratesetting with hearings required. The scoping memo also consolidated A.15-01-014, A.15-02-006 and this application (A.16-03-004).

The parties submitted the following agreed-upon list of issues which were adopted these as being within the scope of this proceeding:

1. The reasonableness of 2013-2015 SONGS 1 decommissioning expenses on completed projects.
2. Adoption of major project milestones establishing the timing for the review of completed SONGS 2 and 3 decommissioning activities.

3. The reasonableness of 2013-2014 SONGS nuclear fuel contract cancellation expenses.
4. The reasonableness of updated 2016 SONGS 1 DCE, and the Utilities respective financial analysis and calculated customer contribution levels for their respective SONGS 1 NDTs.
5. The reasonableness of SCE's 2016 PVNGS DCE, and SCE's financial analyses and calculated customer contribution levels for its PVNGS NDTs.

The parties also submitted several disputed issues. The scoping memo accepted some of these issues and rejected others. The initial scoping memo divided the proceeding into three phases covering the following issues per phase:

PHASE 1

1. SONGS Unit 1 Reasonableness Review of 2013-2015 decommissioning costs; and
2. Reasonableness of Nuclear Fuel Contract Cancellation Costs.

PHASE 2

1. SONGS Unit 1 DCE;
2. PVNGS DCE; and
3. Milestones (if parties have not yet come to an agreement)

PHASE 3

1. Updated SONGS 2 and 3 DCE;
2. Reasonableness review of SONGS 2 and 3 2014 and 2015 Decommissioning Costs.

The scoping memo was amended on June 16, 2017 to include the reasonableness review of 2009-2012 SONGS 1 decommissioning costs of \$13.9

million<sup>40</sup> in Phase 1 of the proceeding. At the June 22, 2017 prehearing conference, it was determined that the Utilities would file the updated SONGS 2 and 3 DCE with the 2018 NDCTP, therefore removing the SONGS 2 and 3 DCE from consideration in Phase 3 of this proceeding. The assigned ALJ directed the Utilities to file the 2018 NDCTP for SONGS no later than March 15, 2018.<sup>41</sup> The scoping memo was again amended on August 10, 2017 to include the issue of compliance with prior Commission decisions in Phase 3 of the proceeding. With these changes in scope the issues to be addressed in Phase 3 of the proceeding were amended as follows:

Phase 3 as amended

1. Reasonableness review of SONGS 2 and 3 2014 and 2015 decommissioning costs; and
2. Compliance with prior Commission decisions.

Intervenor testimony for Phase 1 was served on July 28, 2017 with rebuttal testimony served August 22, 2017. Hearings for Phase 1 of the proceeding occurred the week of September 18, 2017. The parties filed opening briefs on November 2, 2017 and reply briefs on November 17, 2017 for Phase 1. Phase 2 and 3 are addressed in a subsequent decision to be mailed separately from this decision.

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<sup>40</sup> The 2009-2012 SONGS 1 decommissioning costs were previously not allowed, and SCE was ordered to return these funds to the NDTs in Decision (D.) 14-12-082. That decision was modified by D.17-05-017 which allowed for SCE to resubmit the expenditures of \$13.9 million for review in this proceeding.

<sup>41</sup> The Utilities did file the 2018 NDCTP on March 15, 2018. *See* A.18-03-009.

### **3. Positions of the Parties**

The Utilities request that the Commission find that each has met its burden as to the reasonableness of the costs incurred for decommissioning activities and nuclear fuel cancellation contracts. Cal Advocates concurs with the Utilities. TURN is the only party in Phase 1 to oppose certain costs. The parties' positions are set forth in greater detail below.

#### **3.1. The Utilities**

The Utilities assert that they have met their burden of proof in establishing the reasonableness of the decommissioning costs incurred, and that the costs requested in Phase 1 should be deemed reasonable, with zero disallowances.<sup>42</sup>

SCE recommends that the Commission make the following findings:

1. Find as reasonable \$13.9 million (100% share, 2011\$) for SONGS 1 decommissioning costs incurred from January 1, 2009 through December 31, 2012.<sup>43</sup> The Commission should authorize SCE shareholder reimbursement from SCE SONGS 1 non-qualified NDT for the shareholder contribution SCE previously made to it pursuant to the Commission's order in D.14-12-082.

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<sup>42</sup> See SCE's Phase 1 Opening Brief filed November 2, 2017 at 33-34; and SDG&E's Phase 1 Opening Brief filed November 2, 2017 at 1-2 and 24.

<sup>43</sup> These costs include SONGS 1 decommissioning post-Phase 1 closeout activities for the following distributed projects: 1) waste management; 2) mid-bluff stabilization; 3) utility trench; 4) MARSSIM (Multi-Agency Radiation Survey & Site Investigation Manual; and 5) demobilization. [See SCE-02 at 3, 5-14.] The 2009-2012 SONGS 1 costs at issue in this phase of the proceeding also include the following undistributed costs: 1) NRC fees; 2) NEI groundwater protection activities; 3) insurance; 4) workers compensation; and 5) engineering and construction support for specific projects. [See SCE-02 at 14-19.]

2. Find as reasonable \$6.2 million (100% share, 2011\$) for SONGS 1 decommissioning costs incurred from January 1, 2013 through December 31, 2015;<sup>44</sup> and
3. Find as reasonable \$55.2 million (100% share Nominal \$) for SONGS 2 and 3 fuel contract cancellation costs.<sup>45</sup>

SDG&E recommends that the Commission make the following findings:

1. Find as reasonable SDG&E's \$2.8 million (SDG&E share, Nominal \$) for SONGS 1 decommissioning expenses invoiced by SCE to SDG&E between January 1, 2009 and December 31, 2012. The Commission should authorize reimbursement by SDG&E to its shareholders from the SONGS 1 non-qualified NDT for the shareholder contribution previously made pursuant to D.14-12-082 in the amount of \$2.8 million (SDG&E share, Nominal \$).
2. Find SDG&E's \$1.4 million (SDG&E share, nominal \$) for SONGS 1 decommissioning expenses invoiced by SCE to SDG&E between January 1, 2013 and December 31, 2015 reasonable.
3. Find the SONGS 2 and 3 nuclear fuel contract cancellation expenses incurred by SDG&E in 2013 and 2014 are reasonable; and
4. Find the SONGS 2 and 3 nuclear fuel contract cancellation expenses incurred by SDG&E in 2015 are reasonable.<sup>46</sup>

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<sup>44</sup> These costs include: 1) dispositioning of SONGS 1 offshore intake and discharge conduit; 2) groundwater protection activities; 3) providing security and maintenance for SONGS 1 spent fuel until removed from site by DOE; and 4) preparing 2016 SONGS 1 DCE. [See SCE-03 at 1.] The 2012-2015 SONGS 1 costs at issue in this phase of the proceeding also include: 1) NRC fees; and 2) insurance. [SCE-03 at ...]

<sup>45</sup> SCE Phase 1 Opening Brief filed November 2, 2018 at Summary of Recommendations (no page number) and 30.

<sup>46</sup> SDG&E Phase 1 Opening Brief, filed November 2, 2018 at ii and 24.



TURN recommends disallowance for certain expenses for 2009-2012 and 2013-2015. The Utilities argue that TURN's disallowance recommendations are contrary to law, arbitrary, and overreaching. The Utilities assert that TURN is arguing a new standard that relies on hindsight rather than the prudent manager standard.<sup>47</sup> Further, the Utilities assert that TURN's recommendations contravene the Decommissioning Act (Section 8328), and small errors in a decommissioning estimate do not warrant wholesale disallowance that are otherwise reasonable.

### **3.2. Cal Advocates (or ORA)**

Cal Advocates recommends no disallowance for Phase 1 decommissioning costs. Cal Advocates submitted testimony setting forth its analysis concurring with the Utilities as to the reasonableness of the costs incurred that fall within Phase 1 of the this NDCTP.<sup>48</sup> Cal Advocates did not submit briefs for Phase 1 of this proceeding.<sup>49</sup>

### **3.3. TURN**

TURN argues that the Commission should "take this opportunity to establish meaningful accountability for the preparation of Decommissioning Cost

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<sup>47</sup> See D.17-05-020 at 9 stating:

The applicable standard of review for previously incurred costs for SAFSTOR and completed decommissioning projects, is whether the actual expenditures were reasonable and prudent. Prudence of a particular management action depends on what the utility knew or should have known at the time that the managerial decision was made. (Footnotes omitted).

<sup>48</sup> See Exhibit ORA-1 at 1.

<sup>49</sup> Cal Advocates submitted an email to the service list in this proceeding on November 1, 2017, stating that it did not oppose the costs presented in this Phase of the proceeding. See e-mail from William Maguire, counsel for Cal Advocates, to service list in proceeding A.16-03-004 dated November 1, 2018 attached to this decision (Attachment 1).

Estimates (DCEs).”<sup>50</sup> TURN asserts that the 2009 and 2012 DCEs contained “key omissions and errors” when originally submitted in each respective NDCTP. TURN also argues that these key omissions and errors justify a 100% or 50% disallowance of costs incurred for the omitted items, or in the alternative to disallow the costs of preparing the DCEs that contained the omissions and errors.<sup>51</sup>

Certain SONGS 1 decommissioning costs for 2009-2012 were omitted from the prior DCE. TURN argues these expenditures should be disallowed, including: 1) \$2.26 million for waste management; 2) \$0.93 million for NRC fees; and 3) \$1.74 million in miscellaneous decommissioning activities (discussed in more detail below).

TURN additionally recommends that the utility trench work completed in 2009, with cost overruns of \$1.14 million, be disallowed. TURN asserts that this decommissioning Phase 1 work scheduled to be completed in 2008 that ran over into 2009 is not reasonable, and therefore should not be allowed.

As to the reasonableness of SONGS 1 decommissioning costs incurred between 2013-2015, TURN recommends disallowances for the following items: 1) the Nuclear Energy Institute (NEI) groundwater protection initiative (\$0.4 million); 2) NRC fees (\$0.7 million); and 3) the costs for preparing the SONGS 1 2016 DCE (\$0.4 million). TURN, in the alternative, recommends a disallowance of \$0.4 million as a proxy of the costs of preparing the 2012 DCE.<sup>52</sup>

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<sup>50</sup> TURN Opening Brief filed on November 2, 2017 at 3.

<sup>51</sup> *Id.* at 9 and 10.

<sup>52</sup> See TURN Opening Brief at 19-21.

TURN proposes that the determination as to nuclear fuel cancellation costs be deferred until an outcome is reached in the SONGS OII 12-10-013).<sup>53</sup> To the extent that the reasonableness review for these costs occurs now, TURN argues that the USEC contracts should not be deemed reasonable. TURN also argues that the legal services and supply chain expenses are excessive and should be discounted from \$1.9 million to \$0.6 million (\$0.2 million for outside legal counsel, and \$0.4 million for supply chain expenses).<sup>54</sup>

TURN also recommends that SCE prepare a project budget and schedule for removal of the reactor pressure vessel, both of which should be reviewed once the project is completed consistent with the proposed milestone approach addressed in Phase 2 of this proceeding.<sup>55</sup>

### **3.4. Other Parties**

No other parties served testimony, participated in hearings, or filed briefs for Phase 1 of the proceeding. Utilities Consumers' Action Network (UCAN) participated in the party meet and confer prior to the February 23, 2017 PHC as reflected in the Meet and Confer Report but did not submit testimony or briefing for Phase 1 of this proceeding. The Alliance for Nuclear Responsibility (A4RN) submitted a prehearing conference statement in this proceeding on June 6, 2016 responding to the items listed in the May 10, 2016 Ruling setting the PHC. A4NR also participated in the party meet and confer sessions prior to the February 23,

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<sup>53</sup> Deferral of this matter until after I.12-10-013 is moot as the Commission adopted a decision in that proceeding on July 26, 2018 which was issued on August 2, 2018.

<sup>54</sup> See TURN Opening Brief at 22-27.

<sup>55</sup> See TURN Opening Brief at 2 and 21; TURN-01 at 7.

2017 PHC but did not submit testimony or file briefs in this phase of the proceeding.

#### **4. Discussion**

Pursuant to Pub. Util. Code § 451 each public utility in California must:

Furnish and maintain such adequate, efficient, just and reasonable service, instrumentalities, equipment and facilities, ...as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

The duty to furnish and maintain safe equipment and facilities falls squarely on California public utilities, including electric utilities, such as SCE and SDG&E.

The Utilities seek a reasonableness review of the expenses incurred for decommissioning activities in 2009-2012; 2013-2105; and nuclear fuel contract cancellation costs in 2013, 2014, and 2015. The appropriate standard of review for actual expenses is whether the costs are reasonable and prudent – assessing costs, activities and the decisions made to incur those costs at the time the decision was made. Such review includes comparison of actual costs to estimated costs in the most recent DCE, cash flows and schedule. The Commission must also consider the reasons for any differences between the most recent DCE and the actual costs incurred to determine if such costs are reasonable and prudent.<sup>56</sup>

The Commission is required to review the Utilities nuclear decommissioning costs and activities. This review occurs in the NDCTP where costs estimates are reviewed for reasonableness before work is performed; and

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<sup>56</sup> See D.17-05-020 at 14 citing to D.14-02-024 at 43-44.

after the fact determinations are made as to the reasonableness of work performed and expenses incurred since the last NDCTP.<sup>57</sup>

Pursuant to Pub. Util. Code § 8326, the Utilities as the owners of SONGS 1, and SONGS 2 and 3, must prepare, submit, and periodically revise their DCE for SONGS 1 and SONGS 2 and 3. The Commission's directive to review the Utilities DCE is set forth in § 8327:

The commission or the board shall review, in conjunction with each proceeding of the electrical utility held for the purpose of considering changes in electrical rates or charges, the decommissioning costs estimate for the electrical utility in order to ensure that the estimate takes account of the changes in the technology and regulation of decommissioning, the operating experience of each nuclear facility, and the changes in the general economy. The review shall specifically include all cost estimates, the basis for the cost estimates, and all assumptions about the remaining useful life of the nuclear facilities.

The burden of proof is on the Utilities to demonstrate the reasonableness of the DCE and the actual decommissioning costs incurred since the last NDCTP. The standard of proof is that of a preponderance of evidence, which means such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth.

The Utilities are required to demonstrate that a particular activity or expense incurred is reasonable and prudent. We affirm our prior conclusions and orders requiring the Utilities to show that all nuclear decommissioning expenses incurred<sup>58</sup> are the result of appropriate actions and reasonable costs:

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<sup>57</sup> D.17-05-020 at 14; D.10-07-047; and D.14-02-024.

<sup>58</sup> All nuclear decommissioning expenses incurred means just that all expenses whether the costs were included within the DCE or whether the costs were omitted regardless of the reason.

We deny the utilities' request to accord a presumption of reasonableness to cost elements where the actual costs are no greater than the amount reflected in the Decommissioning Cost Estimate. Accurately forecasting the cost of an activity does not necessarily lead to the conclusion that the particular activity is reasonable or even needed. The utilities must show for all their nuclear decommissioning expenditures that they have taken the appropriate actions and at a reasonable cost.<sup>59</sup>

As set forth below, we have analyzed the Utilities' case along with the positions of the other parties and conclude that the Utilities have met their burden as to the reasonableness and prudence of the costs incurred for the 2009-2012 SONGS 1 decommissioning costs and 2013-2015 SONGS 1 decommissioning costs.

#### **4.1. SONGS 1 2009-2012 Decommissioning Costs**

SCE requested that the Commission approve as reasonable \$13.9 million (100% share, 2011\$) for 2009-2012 SONGS 1 decommissioning costs. SCE provided detailed information showing that this amount was spent on activities that included removal of radiological contamination to meet NRC requirements; disposal of low level radioactive waste for permanent off-site storage; and to remediate the site to a condition suitable for future uses.<sup>60</sup> SDG&E supports this

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The Commission also may reduce the amount the Utilities recover for preparing the DCE by disallowing some or all of the cost of the activity at issue if we find that the omissions are so excessive that the DCE cannot be used as a reasonable benchmark to compare against actual expenses. We note that general reoccurring costs should be included in each DCE. It is concerning that SCE failed to include such basic costs as NRC fees and insurance in the 2009 and 2012 DCEs. This concern is discussed in more detail below.

<sup>59</sup> D.16-04-019 at 17.

<sup>60</sup> SCE-02 at 1, 5; and SDG&E-03-A at 4-6.

request to approve the \$13.9 million for 2009-2012 SONGS 1 decommissioning expenses, including its \$2.8 million share invoiced by SCE.<sup>61</sup>

Cal Advocates did not specifically address the 2009-2012 expenditures in its testimony submitted as ORA-01 and ORA-01C.<sup>62</sup> However counsel for Cal Advocates did send an e-mail to the service list in this proceeding on November 1, 2017 stating that “ORA has reviewed all the costs in this Phase and does not oppose them.”<sup>63</sup>

We agree with the premise of TURN’s position that the meaningful accountability for the preparation of DCEs is critical to ensure safe, sufficient, and timely decommissioning of California’s nuclear facilities, we also must look to the reasonableness of any expenses incurred that were omitted from any prior DCE. Here the 2009-2012 DCE failed to include several cost elements that were, or should have been known to the utility at the time the estimates were prepared.<sup>64</sup> Items identified by TURN (and not disputed by the Utilities) that were “mistakenly” omitted from the 2009 DCE include: 1) \$2.26 million in known waste burial costs; 2) \$0.93 million in NRC fees; 3) \$1.74 million in miscellaneous decommissioning activities.<sup>65</sup> Both the Utilities concede that these costs could have been captured in the 2009 DCE.<sup>66</sup>

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<sup>61</sup> SDG&E Opening Brief at 1-2; 6-13; SCE Opening Brief at 6.

<sup>62</sup> ORA-01 and ORA-01C.

<sup>63</sup> See Attachment A.

<sup>64</sup> TURN -01 at 3-8; Reporter’s Transcript Vol. 2 at 112-118.

<sup>65</sup> TURN-01 at 6-7.

<sup>66</sup> SCE-02 at 3, Table II-1; and SDG&E-09 at 6.

TURN's argument is premised on an assumption that if the Commission allows such expenses, based on the Utilities' position, that no reasonableness review of the omitted costs will take place as long as the expenses fall within the amount collected based on the prior DCE. This is neither the case nor what we hold here. All decommissioning expenditures are subject to a reasonableness review. As we stated in D.16-04-019, "the utilities must show for all their nuclear decommissioning expenditures that they have taken the appropriate actions and at a reasonable cost."<sup>67</sup>

Here we find that SCE has met its burden of showing that it took appropriate actions at reasonable costs as to each of the expenditures set out below.

#### **4.1.1. Waste Management Costs (\$2.26 Million)**

SCE requested \$2.26 million in waste management costs. These costs were for completion of SONGS 1 decommissioning work that carried over into 2009. SCE asserts that this work should be deemed reasonable as it would have been imprudent for SCE to not complete the SONGS 1 decommissioning work that remained. To the extent no party has presented evidence to counter SCE's testimony as to the need to complete this work, we find the expenditures reasonable.

We agree with TURN that a reasonableness review of all expenses recovered through rates (here the NDTs which ratepayers have funded) is required. However, we find that the appropriate standard for such review is the

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<sup>67</sup> D.16-04-019 at 17.



reasonable manager standard. The Commission reviews the reasonableness of a utility's actions based on what the utility knew or should have known at the time the utility took the actions, not based on what the utility may have inadvertently omitted from a cost estimate or the results of the utility's actions based on hindsight.<sup>68</sup>

The waste management costs were necessary activities to ensure reliability and safety. We therefore find that SCE has met its burden as to the waste management costs of \$2.26 million.

**4.1.2. Nuclear Regulatory Commission Fees  
(\$0.93 million)**

SCE requested \$0.93 million in NRC fees. We agree with SCE that the costs incurred for regulatory compliance and payment of NRC fees, which include NRC inspection costs, should be deemed reasonable so long as the utility demonstrates that the fees were required and paid. SCE has done so here.<sup>69</sup>

Cal Advocates did not submit testimony specifically addressing the review of these decommissioning costs. However, counsel for Cal Advocates did submit an email to the service list in this proceeding on November 1, 2017 stating that "ORA has reviewed all the costs in this Phase and does not oppose them."<sup>70</sup>

TURN does not claim that these fees were not necessary to meet NRC regulatory requirements, nor does it present evidence that rebuts SCE's showing

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<sup>68</sup> D.17-05-020 at 9; also *see* In re San Diego Gas & Electric Company, D.05-08-037 at 9-11; In the Matter of the Application of Golden State Water Company, D.09-05-025 at 8.

<sup>69</sup> SCE-11 at 3, 10 fn. 14; 10 CFR § 171.15 and 10 CFR 170.12.

<sup>70</sup> See Appendix A – Maguire E-mail.

that such costs are reasonable. TURN argues that these costs were reasonably well known at the time the 2009 DCE was prepared and SCE failed to include these costs, therefore the costs should be disallowed.

We agree that these costs should have been included in the 2009 DCE, and reiterate to SCE that going forward, we expect all known costs or costs that should reasonably be known to be included in future DCEs. Going forward we will take any such general omissions in the DCE into account when determining whether costs to prepare a DCE are reasonable (to what extent preparation costs should be discounted or disallowed, or to what extent actual expenses should be reduced to account for deficiencies in the prior DCE).

We therefore find the \$0.93 million for NRC fees reasonable with the understanding that SCE is expected to include NRC fees and costs that are known or should have been known in all future DCEs.

#### **4.1.3. Miscellaneous Decommissioning Activities (\$1.74 million)**

SCE requested \$1.74 million for miscellaneous decommissioning costs. These activities include: 1) \$1.49 million for engineering and construction support to complete the remaining activities and support the demobilization efforts; 2) \$0.19 million for SONGS 1 nuclear liability and property insurance; and 3) \$0.06 million for workers compensation insurance.<sup>71</sup>

As stated above, Cal Advocates did not submit testimony specifically addressing the reasonableness review of 2009-2012 decommissioning costs.

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<sup>71</sup> SCE-02 at 11.

However, counsel for Cal Advocates did submit an email to the service list in this proceeding on November 1, 2017 stating that “ORA has reviewed all the costs in this Phase and does not oppose them.”<sup>72</sup>

TURN recommended that the Commission disallow 100% or 50% of the costs for these miscellaneous decommissioning activities. In the alternative, TURN recommended that the Commission disallow costs for preparing the 2009 DCE. TURN does not claim that any of the miscellaneous activities were not necessary or reasonable decommissioning activities. TURN bases its recommendation solely on SCE’s failure to include these amounts in the 2009 DCE.

#### **4.1.3.1. Engineering and Construction Work**

It was reasonable for SCE to expend funds on necessary engineering and construction workforce from 2009 to 2012. The engineering and construction workforce provided technical expertise to meet state and federal requirements; and implemented SCE’s quality assurance and control program, which were necessary to maintain SONGS 1 in a safe condition.<sup>73</sup> The engineering and construction workforce supported SONGS 1 post-Phase 1 close out activities for SONGS 1. These close out activities, supported by the engineering and construction work, included stabilization of bluff effort, the utility trench project, and demobilization efforts for restoration of the SONGS 1 site.<sup>74</sup> This work was necessary to meet regulatory requirements, maintain safety at the site, and to complete Phase 1 close out activities for SONGS 1.

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<sup>72</sup> See Attachment A.

<sup>73</sup> SCE Opening Brief at 9. SCE-11 at 11-12; and SCE-2 at 6, 12; 10 CFR § 20 Subpart K.

<sup>74</sup> SCE-02 at 18; SCE-11 at 12.

#### **4.1.3.2. Nuclear Liability and Property Insurance**

NRC regulations require a minimum level of nuclear liability insurance and property insurance for nuclear facilities. Had SCE not maintained a certain level of nuclear liability and property insurance SCE would have violated the law and would not have met the standard for a prudent manager. TURN does not dispute that the nuclear liability insurance or property insurance are reasonable decommissioning cost.

#### **4.1.3.3. Workers Compensation Insurance**

California law and NRC regulations require that SCE maintain workers compensation insurance.<sup>75</sup> It would have been imprudent and unlawful for SCE not to carry workers compensation insurance. TURN does not dispute that maintaining workers' compensation insurance is a reasonable decommissioning cost.

We find that the \$1.74 million in miscellaneous costs were necessary and reasonable to support SONGS 1 post-Phase 1 activities required to remediate the SONGS 1 site in a safe condition suitable for future activities, meet regulatory requirements, and maintain legally required insurance levels.<sup>76</sup>

#### **4.1.4. SONGS 1 Decommissioning Costs – Utility Trench Project**

SCE requested \$.09 million (100% share, 2011\$) in the 2009 SONGS 1 DCE for the utility trench project. SCE incurred \$1.23 million, an overrun of

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<sup>75</sup> SCE-11 at 12; 10 CFR § 140.

<sup>76</sup> SCE-02 at 18; SCE-11 at 11-12; and SDGE-09 at 6:4-6; Also *see* SCE Reply Brief at 9-11; SDG&E Opening Brief at 13.

\$1.14 million.<sup>77</sup> TURN recommends a disallowance for the entire overrun amount.<sup>78</sup> Cal Advocates does not contest the reasonableness of the overrun expenditures and does not recommend any disallowance for this activity.<sup>79</sup>

SCE witness, Mr. Bledsoe, explains the necessity and importance of the utility trench project. He addresses the complexity of the project in that it required relocation of water, telecommunications, and electric utilities that support the SONGS site.<sup>80</sup> Mr. Levin, SDG&E witness also attested to the necessity of the project. He explained the project was necessary for purposes of site restoration, and to ensure that the other site activities were not disrupted.<sup>81</sup>

Cal Advocates did not submit testimony specifically addressing the review of costs incurred for the utility trench project. However, counsel for Cal Advocates did submit an email to the service list in this proceeding on November 1, 2017 stating that “ORA has reviewed all the costs in this Phase and does not oppose them.”<sup>82</sup>

SCE met its burden in providing a reasonable explanation as to the steps taken to prepare for the possibility of a rain storm, including use of sand bags, dewatering pumps, and other precautions taken for rain. SCE also provided a reasonable explanation as to the challenges the project presented. Substantial evidence was submitted by SCE demonstrating that the expenses incurred were

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<sup>77</sup> SCE-02 at 10.

<sup>78</sup> TURN-01 at 6.

<sup>79</sup> ORA-01. *Also see* e-mail from William Maguire sent on November 1, 2017 to service list in A.16-03-004 (Maguire E-mail) attached to this decision as Attachment A.

<sup>80</sup> SCE-02 at 9-10.

<sup>81</sup> SDG&E-03-A at 7.

<sup>82</sup> *See* Attachment A.

reasonable. This evidence included visual evidence of rain damage that went beyond the protective measures implemented by SCE.<sup>83</sup> SCE presented evidence showing that it “completed the utility trench at the optimum time and location under the circumstances that existed.”<sup>84</sup> This project was a close out activity necessary to restore utility services to the SONGS site.<sup>85</sup> We find SCE’s testimony convincing that a delay in the project would likely have resulted in delays to other projects and created other cost increases. The evidence also showed that the project was located at the lowest elevation of the SONGS sites which likely contributed to the increased damage.<sup>86</sup>

We therefore find the additional \$1.14 million in overruns for the utility trench project reasonable with no disallowance for the total amount of \$1.23 million incurred by SCE for utility trench project.

#### **4.2. SONGS 1 2013-2015 Decommissioning Costs**

SCE requested that the Commission approve \$6.2 million (100% share, 2011\$) for 2013-2015 SONGS 1 decommissioning costs. This amount concerns expenses for Phase II<sup>87</sup> SONGS 1 decommissioning activities consisting of: 1) dispositioning of SONGS 1 offshore conduit (\$3.8 million); 2) groundwater protection activities (\$0.4 million); 3) security and maintenance for SONGS 1 spent fuel until it is removed by Department of Energy (DOE) (\$0.9 million);

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<sup>83</sup> SCE-02 at 9-12; SDG&E-03-A at 7.

<sup>84</sup> SCE Reply Brief at 19.

<sup>85</sup> *Id.* at 9-10.

<sup>86</sup> SCE Reply Brief at 18.

<sup>87</sup> Phase II here refers to actual decommissioning activities for SONGS I, not to be confused with Phase 2 of this proceeding.

4) preparing the 2016 SONGS 1 DCE (\$0.4 million); and 5) NRC regulatory fees (\$0.7 million) and insurance (workers' compensation, property, and liability insurance).<sup>88</sup> Each of these activities is a legitimate decommissioning activity. SDG&E and Cal Advocates have conducted independent assessments and agree that the expenses incurred for these activities are reasonable and no disallowance should occur.<sup>89</sup>

SDG&E testified that it independently reviewed and determined that the activities conducted in 2013 -2015 are reasonable, including any variances from the SONGS 1 2012 DCE.<sup>90</sup> SDG&E expert witness Mr. Levin testified that the activities at issue here were reasonable and necessary for decommissioning. SDG&E concurs with SCE's request to find that SDG&E's \$1.4 million (SDG&E share, nominal \$) for SONGS 1 decommissioning costs billed to SDG&E by SCE between January 1, 2013 and December 31, 2015 are reasonable.<sup>91</sup>

Cal Advocates conducted an independent assessment of the 2012-2015 expenditures. This assessment was submitted as testimony for Phase 1 in this proceeding. Cal Advocates recommended that the Commission find these expenses reasonable and did not recommend any disallowances.<sup>92</sup>

TURN recommends a 100% disallowance of certain costs not included in the 2012 DCE, including a disallowance for \$0.7 million in NRC fees, \$0.4 million for ground water protection costs, and \$0.4 million for preparation of the 2016

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<sup>88</sup> SSCE-03 at 1-5; SCE Reply Brief at 13-14.

<sup>89</sup> SDG&E-03-A at 12; ORA-01 at 1.

<sup>90</sup> SDG&E-03-A at 3 and 11.

<sup>91</sup> SDG&E-03-A at 11-12; SDG&E Opening Brief at 13-15.

<sup>92</sup> ORA-1 at 3-4.

DCE.<sup>93</sup> If a 100% disallowance is rejected by the Commission, TURN recommends in the alternative a 50% disallowance for these activities, or for the Commission to disallow the recovery of \$0.4 million as a proxy for the cost of preparing the 2012 DCE.<sup>94</sup> TURN also recommends that if the Commission does not disallow the entire \$0.4 million for preparation of the DCE based on its omission from the 2012 DCE, that \$0.3 million should be disallowed for the preparation of the 2016 DCE on the basis that the cost for preparing the 2016 DCE seems excessive given the scope and amount of the estimate.<sup>95</sup>

#### **4.2.1. NEI Groundwater Protection Initiative and NRC Fees**

Although some cost variance exist between the 2012 SONGS 1 DCE and the actual expenses incurred, the cost presented demonstrate a significant cost savings of \$8.2 million for the offshore conduit disposition.<sup>96</sup> SCE states in testimony and briefing that the overruns for groundwater protection and NRC fees were due to inadvertent omissions from the 2012 SONGS 1 DCE.<sup>97</sup> SCE asserts that TURN's arguments should be rejected here for the same reasons that the arguments should be rejected for the 2009 SONGS 1 DCE, in that mere inadvertent omission of certain costs from a prior DCE should not be the sole basis for a disallowance.<sup>98</sup> The sole basis for TURN's objection to recovery of the NRC fees and groundwater protection costs is that these costs were omitted from

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<sup>93</sup> TURN-01 at 8-9; Opening Brief at 9-11.

<sup>94</sup> TURN Opening Brief at 2.

<sup>95</sup> TURN-01 at 8-9; and TURN Opening Brief at 19.

<sup>96</sup> SCE-03 at 8.

<sup>97</sup> SCE-03 at 9 and 11.

<sup>98</sup> SCE Opening Brief at 24.



the 2012 SONGS 1 DCE, TURN does not argue that the costs were excessive, unnecessary, or duplicative.<sup>99</sup>

Appropriate expenses for decommissioning activities should be recovered from the NDT funds consistent with California law.<sup>100</sup> SCE asserts, and we agree, that the NRC fees paid, and the groundwater protection costs incurred are required and reasonable decommissioning expenditures. SCE therefore has met its burden as to recovery for these activities.<sup>101</sup>

SCE had estimated a total of \$12.4 million (100% share, 2011\$) for the offshore conduit disposition and spent fuel monitoring and maintenance. SCE acknowledges that it omitted costs for NEI Ground Water Protection Initiative costs, NRC fees, nuclear liability insurance, workers compensation insurance, and the cost to update the 2016 DCE. We agree that these costs could have and should have been included in the 2012 SONGS 1 DCE.

However, SCE has demonstrated that even with the omissions identified above, the variance between the DCE and recorded costs is a \$6.2 million underrun, in ratepayers favor. SCE has demonstrated that the omitted costs were necessary to incur for groundwater protection and required NRC fees. It would have been imprudent and unlawful for SCE not to incur these costs.

We therefore find the following expenses reasonable with no disallowances: 1) \$3.8 million for the offshore conduit disposition; 2) \$0.4 million

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<sup>99</sup> TURN Opening Brief 1-13 and Reply Brief 6-9.

<sup>100</sup> See SCE Opening Brief at 2-4 citing to Public Utilities Code Sections 8322-8323, 8326-8328; D.14-12-082; D.16-04-019; and D.17-05-020.

<sup>101</sup> SCE-03 at 8, 11; SCE-11 at 14-15; and SCE Opening Brief at 24.

for NEI Ground Water Protection Initiative; 3) \$0.9 million for Spent Fuel Security and Maintenance; and 4) \$0.7 million NRC fees and insurance.

#### **4.2.2. 2016 SONGS 1 DCE Preparation**

TURN recommends that \$0.4 million expended for the 2016 DCE should be discounted by 75%. This recommendation is based on TURN's representation that "the remaining scope of decommissioning work appears small and includes a very limited number of specific activities."<sup>102</sup> TURN asserts that the remaining scope of work should not have required the time claimed by SCE.<sup>103</sup> Mr. Lacy, TURN's witness stated in testimony that "the preparation, planning and execution of decontamination and demolition has already been completed, leaving only costs associated with long-term monitoring of used fuel and a few other specific projects remaining for inclusion in the 2016 DCE."<sup>104</sup> TURN compares the cost for the 2016 SONGS 1 DCE (\$.04 million) with the estimated cost to prepare the 2018 SONGS 2 and 3 DCE (\$1.4 million) set out in the 2014 DCE for SONGS 2 and 3. TURN argues that the 2018 SONGS 2 and 3 DCE would require a more significant effort to estimate cost for these units as compared to what TURN describes as the "relatively simple cost update for SONGS 1."<sup>105</sup> SCE in turn argues that "[t]he costs for EnergySolutions' preparation of the 2016 SONGS DCE (\$0.4 million) are reasonable for estimating effort required and executed."<sup>106</sup> SCE asserts that the work completed was not

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<sup>102</sup> TURN Opening Brief at 20.

<sup>103</sup> TURN Opening Brief at 20-21.

<sup>104</sup> TURN Opening Brief at 20 citing TURN-01 at 9-10.

<sup>105</sup> TURN Opening Brief at 20.

<sup>106</sup> SCE Reply Brief at 23.

merely “a simple update, as it involved preparing a new estimate from scratch.”<sup>107</sup> TURN argues that the switch from internal staff to outside contractor should have resulted in lower overall costs or superior performance, and that the minimal scope of work required for the 2016 DCE update should have been completed with significantly fewer hours billed for this activity.

SCE asserts that “TURN mischaracterizes SCE’s internal costs for completing prior SONGS 1 DCEs and uses mischaracterization as an additional basis for its disallowance recommendations.” SCE previously tracked all estimating time for “dozens of projects” to one cost account.<sup>108</sup> “After SONGS 2 and 3 were permanently shutdown, the SONGS estimating organization was disbanded” and therefore the prior DCE estimations could not provide a solid foundation for forecasting SONGS 1 decommissioning costs.<sup>109</sup> The prior DCE left omitted required information, and now that SONGS 2 and 3 were permanently shut down, revisions by *EnergySolutions* could facilitate alignment and consistency with the SONGS 2 and 3 DCEs.

The work performed by *EnergySolutions* “was more than a simple update.”<sup>110</sup> *EnergySolutions* was charged with creating a new estimate from the ground up, which required more than a “simple update.”<sup>111</sup> SCE provides two primary reasons for having to conduct more extensive work in preparing the 2016 SONGS 1 DCE update: “1) SCE estimating staff was not available; and

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<sup>107</sup> *Id.*; also see SCE-11 at 17.

<sup>108</sup> SCE Opening Brief at 26.

<sup>109</sup> *Id.*

<sup>110</sup> SCE Reply Brief at 23; SCE-11 at 17.

<sup>111</sup> SCE-11 at 16-17.

2) the prior DCE estimating spreadsheets did not provide a firm basis for forecasting SONGS 1 decommissioning costs.”<sup>112</sup> Additional work was required to improve the estimating template and correct prior errors,<sup>113</sup> as well as to create alignment and consistency with the 2014 SONGS 2 and 3 DCE.<sup>114</sup> SDG&E concurs with SCE that the work completed was more complex than a mere update, as *EngerySolutions* developed several improvements to the estimation templates/process.<sup>115</sup> SCE asserts, and we agree based on the testimony submitted, that the 2016 SONGS 1 DCE was a new estimate as opposed to a mere update. The new estimate is intended to correct errors in the prior DCE template and provide consistency and alignment with the SONGS 2 and 3 DCEs.

In reviewing the testimony, transcripts, and briefs as to the issue of whether the expenditure for the 2016 SONGS 1 DCE preparation is reasonable, we find that SCE has met its burden. The record supports SCE’s position that more work than a simple update was performed by *EnergySolutions*, and that this work was required to produce the updated 2016 SONGS 1 DCE. We therefore find the \$0.4 million to prepare the 2016 SONGS 1 DCE a reasonable expense with no disallowance.<sup>116</sup>

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<sup>112</sup> SCE-11 at 17.

<sup>113</sup> These prior errors included omissions of items such as NRC fees and cost for insurance. The Commission expects that with the additional expenses incurred for the creation of new estimating template for the 2016 SONGS 1 DCE such inadvertent omissions will no longer be a problem, and regular expenses such as these will be included in DCEs submitted to the Commission going forward.

<sup>114</sup> SCE-11 at 17. Also *see* SCE Reply Brief at 24.

<sup>115</sup> SDG&E-09 at 8-9.

<sup>116</sup> As stated above the overall costs incurred for the NRC fees, NEI groundwater protection initiative, and preparation of the 2016, offshore conduit disposition, and spent fuel security and

*Footnote continued on next page*

#### **4.3. Reasonableness Review of SONGS 1 Reactor Pressure Vessel**

TURN recommends, and SCE does not contest, that the reasonableness review of the SONGS 1 Reactor Pressure Vessel (RPV) segmentation and removal from the SONGS site should be treated as a major project (milestone). The RPV is scheduled to occur as part of the SONGS Phase 2 decommissioning activities. TURN proposes that SCE “prepare a project budget and schedule that will be evaluated in its entirety when completed.”<sup>117</sup> This proposal was submitted in order “to prevent SCE from submitting costs related to the RPV in two separate NDCTPs and to ensure that all costs are considered as part of a single project review.”<sup>118</sup> We agree with TURN that “[a]doption of this recommendation will ensure that the review of this project is comprehensive and consistent with the milestone framework to be considered for SONGS 2 and 3 activities in Phase 2 of this proceeding.”<sup>119</sup> We therefore will require SCE to prepare a project budget and schedule that will be evaluated in its entirety when the project is completed consistent with the decision for Phase 2<sup>120</sup> of this proceeding which addresses the milestone framework proposed by the parties.

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maintenance resulted in a variance of \$6.2 million less than the estimated amount in the 2012 DCE. No party disputes that each of these activities is a reasonable and required decommissioning activity. We therefore reject TURN's recommendation to disallow recovery for these items or to disallow recovery of \$0.4 million as a proxy for the cost of preparing the 2012 DCE.

<sup>117</sup> TURN Opening Brief at 21, citing to TURN-01 at 7.

<sup>118</sup> TURN Opening Brief at 22.

<sup>119</sup> TURN Opening Brief at 22.

<sup>120</sup> Phases 2 and 3 of this proceeding have been submitted. The decision for Phases 2 and 3 has not yet been issued but is anticipated to be forthcoming soon.

#### **4.4. SONGS 2 and 3 Nuclear Fuel Contract Cancellation Costs**

The reasonableness review of the 2013, 2014, and 2015 nuclear fuel contract cancellation costs were included in the scope for this phase of the proceeding.<sup>121</sup> The Utilities have the burden to demonstrate that all their nuclear decommissioning expenditures reflect appropriate actions at a reasonable cost.<sup>122</sup> TURN argues that the reasonableness of the nuclear fuel contract cancellation costs should be deferred to the Order Instituting Investigation (I.) 12-10-013 (OII) as a reasonableness review of certain provisions of the current settlement adopted in D.14-11-040 is at issue in that proceeding.<sup>123</sup> TURN's request is moot as the decision in the OII was adopted on July 26, 2018.<sup>124</sup>

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<sup>121</sup> Scoping Memo issued on March 23, 2017, *Joint Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge*.

<sup>122</sup> D.16-04-019 at 17.

<sup>123</sup> TURN no longer supports the settlement adopted in D.14-11-040. However, TURN has joined with the Utilities and other parties in a new settlement that was submitted to the Commission earlier this year. See Joint Motion for Adoption of Settlement Agreement filed on January 30, 2018. For purposes of this decision we are taking official notice that the above motion was filed and that the parties to the proposed settlement filed a Redacted Joint Stipulation Between Alliance for Nuclear Responsibility, the California Large Energy Consumers Association, California State University Employees, the Direct Access Customer Coalition, Ruth Henricks, the Office of Ratepayer Advocates, SDG&E, SCE, and Women's Energy Matters Regarding Undisputed Facts in Support of the Proposed Settlement Agreement (Stipulation of Facts) filed by the parties on April 27, 2018 in I.12-10-013.

<sup>124</sup> The settlement agreement adopted in D.14-11-040 included provisions that provided that 95% of the net proceeds for resale of the nuclear fuel inventory would be credited to ratepayers. See Section 4.7, of Appendix B to D.14-11-040. This settlement agreement was in effect during the time that the evidentiary hearings and briefing in this proceeding took place. D.18-07-037, issued on August 2, 2018, adopts a subsequent settlement agreement that includes provisions for the Utilities to retain all recovery for the resale of the nuclear fuel inventory. See Sections 3.2(e) and 3.5(e) of Attachment 1 to the Joint Motion for Adoption of Settlement Agreement filed on January 30, 2018 in I.12-10-013 by the Settling Parties (2018 Settlement Agreement).

However, D.18-07-037 adopted (with one modification)<sup>125</sup> a settlement submitted by a majority of the parties in the OII, including the Utilities, Cal Advocates, and TURN. This settlement agreement included provisions for SCE to retain all profits from the sale of the remaining nuclear fuel inventory.<sup>126</sup> The settlement adopted in D.14-11-040, that was in place at the time the parties presented evidence and briefed the issues in Phase 1 of the proceeding, provided that 95% of the profits from resale of the nuclear fuel inventory would be returned to ratepayers.

In support of the reasonableness of the incurred nuclear fuel contract cancellation costs, SCE and Cal Advocates both reference significant cost savings and favorable terms that allow for resale of the previously delivered but unused inventory. TURN opposes specific nuclear fuel contract cancellation costs.<sup>127</sup> The settlement adopted in D.18-07-037 includes provisions that alter the prior settlement as to treatment of cost recovery and credits for resale of nuclear fuel.<sup>128</sup>

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<sup>125</sup> The modification eliminated the greenhouse gas emission reduction research program. This modification does not impact the terms set out in the agreement concerning the nuclear fuel inventory.

<sup>126</sup> D.18-07-037 at 20-21; Section 3.2(e) of Attachment 1 to 2018 Settlement Agreement.

<sup>127</sup> TURN requests that the Commission “decline to find that SCE actions were reasonable with respect to the USEC procurement contracts” and that “SCE should be limited to recovery of \$0.6 million for legal services and supply chain expenses because it failed to satisfy its burden of proof.” TURN Opening Brief at 2.

<sup>128</sup> Section 3.2 (e) of the 2018 Settlement states:

From and after the Cessation Date, the Utilities will not recover Nuclear Fuel Investment in rates. The Utilities shall retain all proceeds from the sale of their share of Nuclear Fuel (the City of Riverside having the remaining share), and no portion of such proceeds shall be credited to ratepayers.

Section 3.5(e) of the 2018 Settlement Agreement states:

*Footnote continued on next page*

Therefore, the record in this proceeding is incomplete for purposes of assessing the reasonableness of the nuclear fuel contract cancellation costs. The reasonable value of the revised terms of the nuclear fuel contracts, legal fees, and carrying costs will be deferred to the 2018 SONGS NDCTP. Parties may submit limited supplemental testimony and briefing as to whether and if so how D.18-07-037 impacts the determination of what should be deemed a reasonable expense to ratepayers for the nuclear fuel contract cancellation costs, including legal fees, and carrying costs.

**5. Standard of Review for Nuclear Decommissioning Cost Estimates and Presumption of Reasonableness**

We reiterate what was held in D.16-04-019 in that there is no presumption of reasonableness to cost elements even where the actual costs are no greater than the amount reflected in the DCE. “Accurately forecasting the cost of an activity does not necessarily lead to the conclusion that the particular activity is reasonable or even needed.”<sup>129</sup>

The utilities have the burden to demonstrate that all nuclear decommissioning expenditures reflect prudent actions at a reasonable cost.<sup>130</sup> This does not mean that if a reasonable expenditure that reflects an appropriate action is inadvertently omitted the utilities should automatically receive a 100%

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With the exception of nuclear fuel contract cancellation costs, nothing in this Settlement Agreement constrains the right of the parties to seek disallowances for the recovery of costs related the decommissioning of SONGS as considered in current or future Nuclear Decommissioning Cost Triennial Proceedings or any other related Docket.

<sup>129</sup> D.16-04-019 at 25-26.

<sup>130</sup> D.16-04-019 at 17.



or 50% disallowance for otherwise reasonable expenditures. To the extent that a utility has numerous and ongoing DCE omissions for routine costs, or project costs that could reasonably be anticipated at the time the DCE was prepared we will consider these factors (number of omissions, costs omitted, on-going and continuous omissions) when allowing or disallowing costs for preparation of the DCE, or reductions to costs that reflect reasonable value of failing include in prior DCE. To the extent that omissions are numerous, on-going and without justification we will also consider whether such omissions would result in a finding that the Utilities have failed to comply with prior Commission decisions, and whether such omissions warrant other action, such as an Order to Show Cause or an investigation.

The omissions reflected in this Phase of the proceeding raise concerns but are not so egregious as to warrant further action at this time, beyond a warning to the Utilities that we expect future DCEs to include information that is known or reasonably should be known at the time the DCE is prepared. We also note that SCE has represented that the 2016 SONGS 1 DCE preparation included development of a new cost estimate template that we expect to eliminate the types of inadvertent omissions that occurred with the 2009 and 2012 DCEs.

## **6. Categorization and Need for Hearing**

The Commission preliminarily categorized this Application as ratesetting as defined in Rule 1.3(a)(e) and anticipated that this proceeding would require evidentiary hearings in ALJ 176-3374 on March 17, 2016. The assigned Commissioner's scoping memo affirmed the preliminary categorization of this proceeding as ratesetting and the need for hearings.

## **7. Comments on Proposed Decision**

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on October 1, 2018 by SCE and TURN and reply comments were filed by SCE on October 8, 2018.

Rule 14.3 requires that Comments "focus on factual, legal or technical errors in the proposed or alternate decision and in citing such errors shall make specific references to the record or applicable law. Comments which fail to do so will be accorded no weight." We give no weight to comments that do not comply with this rule.

To the extent required, revisions have been incorporated herein to reflect the substance of these comments. We have specifically addressed SCE's recommended change to Finding of Fact 1 correcting an error regarding SONGS's ownership interests. This recommendation has been accepted and Finding of Fact 1 has been changed to correct this error.

TURN recommends two specific changes to the proposed decision. First, TURN recommends that the Commission "hold the SONGS 1 co-owners responsible for unreasonable and inadequate preparation of the 2009 and 2012 DCEs."<sup>131</sup> Second, TURN recommends that the Commission disallow \$1.14 million cost overrun for the utility trench project and find that the overruns

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<sup>131</sup> Opening Comments of TURN on the Proposed Decision of ALJ Houck on Phase 1 Issues, filed October 1, 2018 at 1.

were “not the result of unexpected rain but rather inadequate preparation given known (or knowable) historical patterns of precipitation.”<sup>132</sup>

We decline to adopt TURN’s recommendations. As to the first recommendation, as noted in TURN’s comments, we agree with and share the concerns raised by TURN as to SCE’s failure to include what appear to be standard and ongoing cost in prior DCEs. However, the purpose of the DCE is to provide an estimate of the cost (funds) needed for decommissioning activities, and here there was no harm to ratepayers as pointed out by SCE its October 8, 2018 reply comments.

As to the utility trench project we also decline to adopt TURN’s recommendation and find that SCE did meet its burden of proof in demonstrating that the cost overruns were reasonable as discussed above.

## **8. Assignment of Proceeding**

Martha Guzman Aceves is the assigned Commissioner and Darcie L. Houck is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. SCE holds an approximately 75.74% interest, SDG&E holds a 20% interest, the City of Anaheim holds an approximately 2.47% interest, and the City of Riverside holds a 1.79% interest in SONGS 2 and 3 decommissioning liability respectively.<sup>133</sup>

2. SCE holds an 80% interest and SDG&E holds a 20% interest in SONGS 1 decommissioning liability.

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<sup>132</sup> *Id.*

<sup>133</sup> The City of Riverside holds the remaining ownership interest.

3. On January 30, 2015 SCE filed A.15-01-014 with the Commission for a reasonableness review of 2014 SONGS 2 and 3 expenses.

4. On January 30, 2015 SDG&E filed A.15-02-006 for a reasonableness determination and recovery of 2014 O&M and non-O&M SONGS costs.

5. On March 1, 2016 SCE and SDG&E filed a joint Application (A.16-03-004) for the 2015 NDCTP.

6. D.14-12-082 concluded that SCE and SDG&E did not meet their burden of proof to establish \$13.9 million of SONGS 1 decommissioning expenses.

7. SCE and SDG&E requested a rehearing for the Commission to review again the \$13.9 million not allowed in D.14-12-082 and approve these expenses as reasonable.

8. On May 15, 2017, the Commission issued D.17-05-017 modifying D.14-12-082 to allow SCE to seek reimbursement for the \$13.9 million previously not recovered in a subsequent proceeding.

9. The scoping memo in this proceeding was amended on June 16, 2016 to consider whether the \$13.9 million for SONGS 1 decommissioning expenses incurred between January 1, 2009 and December 31, 2012 are reasonable.

10. SCE requested the Commission find reasonable \$6.2 million (100% share, 2011\$) for SONGS 1 decommissioning costs incurred from January 1, 2013 through December 31, 2015.

11. SDG&E requested that the Commission find reasonable its \$2.8 million share of the January 1, 2009 through December 31, 2012 costs invoiced by SCE to SDG&E that the Commission authorized to be re-reviewed (\$13.9 million).

12. SDG&E requested that the Commission find reasonable its \$1.4 million share of costs invoiced by SCE to SDG&E between January 1, 2013 and December 31, 2015.

13. SCE and SDG&E requested that the Commission find reasonable the \$55.2 million (100% Share, Nominal \$) incurred in 2013, 2014, and 2015 for SONGS 2 and 3 nuclear fuel contract cancellation costs.

14. ORA filed a protest in this proceeding on April 4, 2016.

15. TURN filed a protest in this proceeding on April 4, 2016.

16. The 2009 and 2012 DCEs contained errors that omitted portions of known costs that were incurred in the following years.

17. The costs omitted from the 2009 and 2012 DCEs were necessary costs including payment of regulatory and insurance fees required by law; and costs to ensure protection of groundwater and spent fuel security and maintenance.

18. Waste management expenses incurred between January 1, 2009 and December 31, 2012 for removal of low level radioactive waste and hazardous (non-radiological) waste were necessary to leave the SONGS 1 site in safe condition suitable for future activities.

19. The utility trench project that extended into 2009 was necessary to relocate water, telecommunications, and electric utilities to support the SONGS site restoration, as well as the additional work required due to heavy rains that caused contaminated rain water to wash into the trench.

20. The additional \$1.14 million in overruns for the utility trench project are reasonable to support the SONGS site restoration, and relocate water, telecommunications, and electric utilities due to heavy rains that caused contaminated rain water to wash into the trench.

21. The NRC fees incurred at \$0.93 million that were omitted from the 2009 SONGS 1 DCE were reasonable and required for NRC regulatory compliance.

22. The additional \$1.74 million for miscellaneous costs not included in the 2009 SONGS 1 DCE are reasonable expenditures necessary to maintain SONGS 1 in a safe condition.

23. The additional \$2.26 million for waste management costs that were omitted from the 2009 DCE are reasonable.

24. The recorded expenditures of \$6.20 million for expenses incurred between January 1, 2013 and December 31, 2015 are reasonable.

25. The recorded expenditure of \$0.4 million for preparing the 2016 SONGS 1 DCE is reasonable as the preparation included development of new cost estimate templates, and alignment and conformity of the DCE cost estimate templates with SONGS 2 and 3 DCE format.

26. The revised format prepared in development of the 2016 SONGS 1 DCE will allow for avoidance of errors and omissions in the DCE for general items such as NRC fees, insurance, and other matters that were inadvertently omitted from the prior DCEs.

27. The SONGS 1 decommissioning expenses invoiced by SCE to SDG&E between January 1, 2009 and December 1, 2012 are reasonable.

28. The SONGS 1 decommissioning expenses invoiced by SCE to SDG&E between January 1, 2013 and December 31, 2015 are reasonable.

29. Additional information regarding the expenditures incurred for nuclear fuel contract cancellation costs, including legal fees and supply chain personnel support, is necessary to decide whether such costs are reasonable to recover from the ratepayer funded NDTs.

30. All disbursements from the NDT funds are provisional and subject to an obligation to refund any improper costs to the NDTs.

31. It is reasonable to conduct after-the-fact reasonableness reviews of expenditures for decommissioning expenses in the NDCTP, unless otherwise scheduled.

32. It is reasonable that the RPV segmentation and removal from the SONGS site be considered as a major project.

33. It is reasonable to require SCE to prepare a project budget and schedule for the RPV segmentation and removal from the SONGS site that will be evaluated consistent with the milestone framework proposed by the parties for SONGS 2 and 3 in Phase 2 of this proceeding.

### **Conclusions of Law**

1. The overall applicable standard of review for the requests in the utilities' applications is one of reasonableness, specifically whether the actual decommissioning expenses incurred during the relevant DCE time periods are reasonable and prudent.

2. The Utilities bear the burden of proof to demonstrate actual decommissioning expenditures incurred are reasonable and prudent.

3. The Utilities established by a preponderance of the evidence that \$13.9 million (100% share, 2011\$) for SONGS 1 decommissioning expenses incurred from January 1, 2009 and December 31, 2012 are reasonable and prudent.

4. The Utilities established by a preponderance of the evidence that \$6.2 million (100% share, 2011\$) for SONGS 1 decommissioning expenses incurred from January 1, 2013 and December 31, 2015 are reasonable and prudent.

5. Considering the issuance of D.18-07-037, the record in this proceeding is insufficient to establish the reasonableness of the nuclear fuel contract

cancellation expenses incurred in 2013, 2014, and 2015, and the parties should provide additional evidence and briefing in the 2018 SONGS NDCTP.

6. All disbursements from the NDT funds are provisional and subject to an obligation to refund any improper costs to the NDT.

7. Discharging our duty to review decommissioning costs pursuant to Pub. Util. Code §§ 451 and 8327 requires that SCE and SDG&E file after-the-fact reasonableness reviews of expenditures for decommissioning SONGS 1, 2 and 3 in the NDCTP, unless otherwise scheduled.

8. Discharging our duty to review decommissioning costs pursuant to Pub. Util. Code §§ 451 and 8327 requires that when SCE completes a major component of nuclear decommissioning for SONGS Units 2 and 3, SDG&E should submit a separate reasonableness application with a comprehensive showing the decommissioning activities and costs from the conceptual plan through the actual recorded costs tied to line items in the DCE.

9. Further scheduling for reasonableness reviews of nuclear decommissioning costs for SONGS Units 1, 2 and 3 will be set in the NDTCP.

10. The Utilities' request to accord a presumption of reasonableness to cost elements where the actual costs are no greater than the amount reflected in the DCE was summarily denied in D.16-04-019 and a reasonableness review of all expenses incurred is required whether the expense is no greater than the amount reflected in the DCE or not.

11. SCE remains responsible for all decommissioning activities whether conducted by SCE employees or a contractor.

12. Pub. Util. Code § 451 requires safe operation of an electric system. It is a long-standing and continuing responsibility, not a one-time obligation.



13. The burden of proof is on SCE and SDG&E to demonstrate the reasonableness of the expenses incurred for decommissioning activities.

14. The standard of proof is that of a preponderance of evidence, which means such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth.

15. This decision should be effective today.

16. This proceeding remains open pending a decision in Phases 2 and 3 of the proceeding.

## **O R D E R**

### **IT IS ORDERED** that:

1. Southern California Edison Company must continue to file annually Forecast and Recorded Decommissioning Disbursements Tier 2 Advice Letters; each such Advice Letter must show information supporting the requested disbursement tied to the Nuclear Decommissioning Cost Estimate and show expenditures and related progress toward specific major milestones in the decommissioning process.

2. San Diego Gas & Electric Company (SDG&E) must continue to file annually Forecast and Recorded Decommissioning Disbursement Tier 2 Advice Letters consistent with its share of San Onofre Nuclear Generating Station 2 and 3 decommissioning costs as presented by Southern California Edison (SCE) and billed to SDG&E by SCE, plus include any additional administrative costs unique to SDG&E. Such Advice Letters must show information supporting the requested disbursements.

3. All disbursements from the Nuclear Decommissioning Trust Funds are provisional and subject to an obligation to refund any improper costs to the Trust Funds.

4. Southern California Edison Company and San Diego Gas & Electric Company must file after-the-fact reasonableness reviews of expenditures for decommissioning San Onofre Nuclear Generating Station Units 1, 2 and 3 in the Nuclear Decommissioning Cost Triennial Proceedings, unless otherwise directed.

5. The nuclear decommissioning expenditures reviewed in Phase 1 of this proceeding for San Onofre Nuclear Generating Station 1 decommissioning costs incurred between January 1, 2009 and December 31, 2012 are deemed reasonable.

6. The nuclear decommissioning expenditures reviewed in Phase 1 of this proceeding for San Onofre Nuclear Generating Station 1 decommissioning cost incurred between January 1, 2013 and December 31, 2015 are deemed reasonable.

7. Southern California Edison Company shall prepare a project budget and schedule for removal of the Reactor Pressure Vessel segmentation and removal from the San Onofre Nuclear Generating Station (SONGS) site that will be reviewed when completed. The review of this project is to be comprehensive and consistent with the milestone framework to be adopted for SONGS 2 and 3 in Phase 2 of this proceeding and Ordering Paragraph 8 of Decision 16-04-019.

8. Parties are directed to provide additional limited testimony and briefing on the reasonableness of the nuclear fuel contract cancellation costs consistent with the scoping memo to be issued in the 2018 San Onofre Nuclear Generating Station Nuclear Decommissioning Cost Triennial Proceeding, Application 18-03-009. The testimony and briefing submitted shall be limited to whether Decision 18-07-037 impacts the reasonableness of whether and to what

extent costs incurred for the nuclear fuel contract cancellations, including legal fees and carrying costs, should be recovered from the ratepayer funded nuclear decommissioning trusts.

9. All motions not acted on are deemed denied.

10. Application (A.) 16-03-004, A.15-01-014, and A.15-02-006 will remain open pending a decision as to Phases 2 and 3 of this proceeding.

This order is effective today.

Dated October 11, 2018, at San Francisco, California.

MICHAEL PICKER

President

CARLA J. PETERMAN

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

Commissioners